

Learning from Crack

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As a society, we got almost everything wrong when it came to crack cocaine. We declared a war on crack, and crack won. Beneath it all was a simple mistake that we committed to, spent a fortune on, and codified. That mistake was a failure to recognize that the driving force behind the spread of crack cocaine was not a depraved gang, or race dynamics, or the CIA, or the very force of evil—it was capitalism.

I. MYTH AND BUSINESS

In 1996, United States Congresswoman Maxine Waters attracted the attention of the media and the nation by accusing the Central Intelligence Agency of introducing crack cocaine into the United States. She called hearings to present testimony supporting this charge, which she made clear in a press release:

“The origin of the crack cocaine trade in this country was led and designed by the CIA and their paid Nicaraguan agents—who introduced crack cocaine to South-Central Los Angeles,” proclaimed Waters as the hearing began. “The consequences of this wholesale dumping of cocaine into inner cities by CIA-organized agents has been widespread homelessness, violence, the destruction of families, and death.”¹

Waters was right about two things, and wrong about one. She was right about the path of social destruction that crack mowed through many already troubled communities. She was also right that crack originated in and around Los Angeles (though perhaps not in the South-Central neighborhood). However, she was wrong—famously wrong—about this being the work of the CIA. Instead, it was the work of entrepreneurs making logical and very profitable business decisions. While those decisions may have been illegal and immoral, they were directed not by a government conspiracy, but by market forces.

Waters had made the mistake of relying on and exaggerating material drawn from a single source. In this case, that source was a reporter for the *San Jose*

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¹ Press Release, Rep. Maxine Waters Leads Challenge to Congress, Administration to Investigate C.I.A.-Led Drug Dealings (Sept. 13, 1996), available at <http://web.archive.org/web/19990127153420/http://www.house.gov/waters/pr913cb.htm>.

Mercury News named Gary Webb, who had written a series of articles titled “Dark Alliance.” The first of these articles appeared on the front page of the *Mercury News*, along with an image of a man smoking crack with the seal of the CIA superimposed over him.²

In those articles, Webb never made the claim that Waters did: That it was the CIA which “designed” and “led” the crack cocaine trade in Los Angeles at the time crack was gaining a beachhead in the United States. Webb had, actually, simply shown that people allied with the CIA-backed “Contras” in Nicaragua had sold powder cocaine to “Freeway” Ricky Ross, a prominent Los Angeles crack dealer, a fact that the CIA later admitted.³

While crack was not created by the CIA or by an evil genius in a lab bent on world domination, the truth is no less fascinating. Crack was created by entrepreneurs who developed and marketed a product. Like many other entrepreneurs, they did so in an environment where multiple versions of a product competed for the same group of potential customers. Similarly, crack was not spread across the United States by a gang or the mob or the government—rather, it moved steadily into new markets through individuals and small groups seeking greater profits.

Thirty years later, it is now clear that the story of crack’s origins is not a spy tale or a conspiracy narrative. Instead, it is a business story. The characters at the center of it all are those who bought and sold things, developed new markets, and created new products. It was our failure to see this plain truth which was the root of our larger failure to address the problems created by the use and trafficking of a shockingly dangerous narcotic: crack cocaine.

II. THE CREATION OF CRACK

Crack cocaine surfaced in the United States like oil bubbling up in a lake. Its origins were obscure, and few people in power noticed the problem until it had spread so widely that it was hard to miss.

Cocaine itself, of course, was nothing new. Powder and liquid cocaine were used in the United States and marketed legally long before crack appeared. In the mid-1800s, producers began to sell an extract of coca leaves, cocaine hydrochloride, that was water soluble. The value of this product was that it could lift moods, forestall sleep, and produce feelings of elation and euphoria. Physicians began to recommend it as an anti-depressant, asthma remedy, and even as a treatment for opiate addiction. Recreational use burgeoned as manufacturers put cocaine in beverages, including (most famously) Coca-Cola. By the 1880s, though, states began passing anti-cocaine laws, and gradually the federal government restricted cocaine—first by requiring labels, then through taxation and

² Nick Schou, *The Truth in ‘Dark Alliance’*, L.A. TIMES, Aug. 18, 2006, <http://articles.latimes.com/2006/aug/18/opinion/oe-schou18>.

³ *Id.*

registration of legal providers, and finally by effectively ruling that cocaine had no legitimate uses. By 1930, cocaine was a purely underground commodity, usually sold in powder form.⁴

That status did not change for some 40 years, until a time of great social changes in many areas of American life. Hidden among those upheavals is the fact that the 1970s and 1980s were an era of great innovation in the field of illegal narcotics. Of all the new developments of that time, though, crack cocaine was the most significant. In the end, it was crack which was most alarming, which most directly shaped American law, which obsessed politicians and the media for years, and which sadly served as a too-easy proxy for tough racial issues within American society.

As with many of history's greatest innovations, we do not know the name of the person who first created what we now call "crack cocaine" (a moniker that was created a decade later). We do know, however, that his or her invention probably arose in Southern California in the mid-1970s.

Whoever it was who created crack seems to have had a strong understanding of how narcotics are used and their physiological effects. Cocaine in its powder form (which is the active ingredient in crack) is a unique and remarkable narcotic: it is the only popular, recreational drug which serves simultaneously as a local anesthetic and as a stimulant to the central nervous system. This combination has obvious benefits to the user, as it can "numb out" pain while creating strong feelings of alertness and energy.⁵

Cocaine also is subject to a variety of adaptations, which create valuable possibilities for innovation. For example, how a drug is taken has a big impact on the physical effects of that drug. Some narcotics, including cocaine, can be ingested in at least three ways. First, it can be eaten or snorted into the nose. Second, it can be smoked or inhaled. Third, it can be injected into the bloodstream.

The method of ingestion used will usually define three different outcomes: how quickly the drug affects the user, how long the stimulation lasts, and how strong those effects are (that is, how "high" you get). Injecting a narcotic will generally result in the fastest high, the shortest in duration, and the most intense, while eating or snorting the substance will create the slowest onset, the longest effect, and the least intense high. The fact that smoking cocaine gives a shorter and more intense experience does make it more addictive than snorting powder cocaine, because the user is likely to use the drug more frequently to sustain these shorter highs.⁶

⁴ John P. Morgan & Lynn Zimmer, *The Social Pharmacology of Smokeable Cocaine: Not All It's Cracked Up to Be*, in *CRACK IN AMERICA: DEMON DRUGS AND SOCIAL JUSTICE* 131, 131–32 (Craig Reinerman & Harry G. Levine eds., 1997).

⁵ ARNOLD M. WASHTON, *COCAINE ADDICTION: TREATMENT, RECOVERY, AND RELAPSE PREVENTION* 11–12 (1989).

⁶ U.S. SENTENCING COMM'N, *REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY* 63, 65–66 (2007), available at

In other words, what makes crack more addictive than powder cocaine is not what it *is*, but how it is *used*—in either case, the active ingredient is cocaine. Crack is not a different substance, but a version of that substance which can be smoked.

Given this, it should not be surprising that people worked hard to develop a form of cocaine that could be smoked. If this could be done, the result would provide two great sales points, relative to powder cocaine: it would provide a more intense experience for the user, and it would produce more reliable (addicted) customers.

The development of a smokeable form of cocaine is a classic tale in the development of a new market. Seeing the possibilities of profit, many people worked to develop smokeable forms of cocaine in the 1970s, adding a variety of substances to the active ingredient of powder cocaine.

The chemistry involved is fairly simple. In order to be smoked or otherwise inhaled, powder cocaine has to undergo a chemical process which will allow the drug to catch fire and vaporize at a lower temperature—it is impossible to vaporize most powder cocaine without destroying it. In other words, you cannot just jam powder cocaine in a pipe and smoke it; first, it has to be converted into a form that will produce vapor (rather than melt) at the temperature of an open flame.

Powder cocaine is usually processed outside the country and then imported into the United States in the form of cocaine hydrochloride. The process for making cocaine hydrochloride is not complex. First, cocaine plants are made into a paste, which is dissolved into hydrochloric acid and water. Potassium salt is then added, and then ammonia. The resulting powder is often “cut” with inert substances (for example, sugar or local anesthetics) prior to distribution.⁷

The vaporization temperature of this cocaine hydrochloride can be lowered to smokeable levels by mixing it with water and a base substance to remove or neutralize the hydrochloric acid.⁸

In the 1970s and early 1980s, all smokeable and inhalable forms of cocaine which had been subjected to this process (including what later came to be called “crack”) were identified as a group as “freebase.” There were five primary types of freebase, distinguished by the substances used to combine with the powder cocaine over heat and the process used to do so. Two of these—the “California Clean-Up Method” and the “Careful California Method”—used ether as a solvent. These presented special problems, due to the dangerous volatility of ether. Two others, the “Ammonia Method” and the “Spoon Method,” used ammonia hydroxide as the solvent. The fifth way was called the “Baking Soda Method.”⁹

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.

⁷ *Id.* at 62.

⁸ Morgan & Zimmer, *supra* note 4, at 133.

⁹ Ronald K. Siegel, *Cocaine Smoking*, 14J. PSYCHOACTIVE DRUGS: A MULTIDISCIPLINARY FORUM 271, 312–13 (1982).

It was the last of these, the Baking Soda Method, that created what we now know as crack cocaine. Using this method, a “chef” would simply mix water with powder cocaine and baking soda and heat the resulting paste. As it dries, the substance “rocks up” to form small pebbles, which can then be smoked.¹⁰ Thus, during this early period of development, crack was just one of several varieties of freebase cocaine.

The Baking Soda Method did not necessarily produce the best product. In fact, relative to the products produced by other methods, baking soda-based rocks were sometimes referred to as “garbage freebase” because they contained both impurities from the powder cocaine and the baking soda, which did not cook off during the process.¹¹ While the other processes purified the cocaine, the Baking Soda Method did the opposite—it further diluted the active ingredient.

Crack initially spread from West to East in the United States, beginning in Southern California and landing on the East Coast about 1980. It was only then, in East Coast cities, that this product of the Baking Powder Method was first referred to as “crack,” because of the crackling noise it made when it was cooked.¹²

At about the same time that baking soda-based crack was starting to appear outside of California, a singular incident put freebase cocaine on the national radar. On June 9, 1980, popular comedian Richard Pryor was admitted to the hospital with severe burns. According to police, he had burned himself accidentally while cooking up freebase for his own use. At that time, this was common—crack was cooked up by the consumer, not the dealer, who simply sold powder cocaine to the end user.¹³ That left to the buyer the task of creating the freebase over heat, often using the “California” methods which required the use of volatile ether.

One reason the Pryor incident received such widespread attention was because of the severity of his injuries, with over half of his body suffering severe burns. Later in his career, Pryor described the burning as a suicide attempt, and even incorporated the tragedy into his stand-up comedy.¹⁴

It is not surprising that a wealthy celebrity like Pryor (rather than poorer Los Angelenos) would be found using freebase. Freebasing cocaine using the ether method was expensive, because the process removed impurities and thus required more cocaine per dose, not less.¹⁵ This contrasted sharply with the process which would prevail—the Baking Soda Method that produces crack. There, rather than

¹⁰ *Id.* at 313.

¹¹ EDITH FAIRMAN COOPER, *THE EMERGENCE OF CRACK COCAINE ABUSE* 6–7 (2002).

¹² *Id.* at 6.

¹³ *Id.* at 9.

¹⁴ *Comedian Richard Pryor Dies at 65*, CNN U.S., Dec. 10, 2005, http://articles.cnn.com/2005-12-10/us/ryor.obit_1_richard-ryor-comedian-movies-multiple-sclerosis-stand-up-comedy?_s=PM:US.

¹⁵ *Richard Pryor's Tragic Accident Spotlights a Dangerous Drug Craze: Freebasing*, PEOPLE, June 30, 1980, <http://www.people.com/people/archive/article/0,,20076864,00.html> [hereinafter *Dangerous Drug Craze*].

impurities being taken out, a significant impurity (baking soda) is added, and remains a part of the resulting rocks.

The emergence of baking soda-based crack over other freebase methods is typical of any kind of developing technology in a market. Often, different alternatives co-exist briefly before a methodology emerges which is adopted by the industry as a whole. For example, we live in an age where all bicycles feature two equal-sized wheels. However, in the late 1800s, a variety of bicycle designs competed with one another. There were high-wheeled bicycles with a huge front wheel and a tiny rear wheel; another design with a large rear wheel and a small front tire; and even a high-wheeled tricycle, all of which competed with bikes with two equal-sized wheels.¹⁶ Over time, the modern version emerged as preferable to the market, and now we only see high-wheeled bicycles in parades and museums.

The evolution of freebase cocaine went through a similar developmental period, and with a like result—you are about as likely to find someone using ether to freebase cocaine today as you are to find someone riding a high-wheeled tricycle to school.

The present narcotics landscape provides simple proof that crack prevailed over competing technologies in the cocaine freebase market, but we can only guess at the reasons why. A look at the market being served, though, offers some ideas.

First, the Baking Soda Method was easy. Everyone knows how and where to get baking soda, while most of us would be stumped if asked to pick up some ether on the way home from work. Importantly, it was also less dangerous because there was no application of an open flame to volatile substances such as ether. No one wanted to end up as the “next Richard Pryor.”

Second, the Baking Soda Method allowed the chemical processing to be transferred from the user to the seller.¹⁷ If the California (ether based) methods of freebasing had prevailed, there never would have been such a thing as a crack dealer (or freebase dealer), because the end user would be purchasing plain old powder cocaine, which *he* would then dissolve in ether in the privacy of his own home. The buyer did the work of creating the freebase.¹⁸ Once the conversion to freebase shifted from buyer to seller with the market dominance of the Baking Soda Method, concrete business opportunities arose for those sellers. For example, the seller can easily make greater profits through the defining process of crack-making: “cutting” the powder cocaine with baking soda before sale. In addition,

¹⁶ A brief history of the bicycle is available on the website of the Pedaling History Bicycle Museum, which can be found at <http://www.pedalinghistory.com/PHhistory.html>. In the end, it was the development of pneumatic tires that aided the primacy of bikes with two evenly-sized tires, a chain, and pedals.

¹⁷ Michael Massing, *Crack's Destructive Sprint Across America*, N.Y. TIMES, Oct. 1, 1989, <http://www.nytimes.com/1989/10/01/magazine/crack-s-destructive-sprint-across-america.html?src=pm>.

¹⁸ Craig Reinerman & Harry G. Levine, *The Crack Attack: Politics and Media in the Crack Scare*, in *CRACK IN AMERICA: DEMON DRUGS AND SOCIAL JUSTICE* 18, 18 (Craig Reinerman & Harry G. Levine eds., 1997).

crack is a value-added product relative to powder cocaine—as a smokeable product, it offers a higher and quicker high than powder cocaine.

Finally, and perhaps most importantly, crack could reach a price point at or below \$5 per use, opening up whole new markets. Compared to other types of freebase production, the Baking Soda Method produced the least expensive product. As the Richard Pryor incident revealed, other methods removed impurities from powder cocaine, meaning that a user needed more cocaine, not less, to make freebase. In contrast, the Baking Soda Method added an adulterant to the mix, and that adulterant (baking soda) was very cheap. Street samples of crack tend to contain only about 10–40% cocaine. As a result, rocks could be produced and sold for as little as \$2 on the street.¹⁹

III. THE SPREAD OF CRACK

The development of crack in Los Angeles was a typical market process—one product won out from others through competition, because it had certain inherent advantages that responded to demand in that market. Just as it was these market forces, not a conspiracy, that led to the creation and development of crack, it was market forces, rather than gangs or organized crime, that primarily led to crack's emergence in so many disparate American cities and towns. Like many other products, what emerged in California could eventually be found in Peoria.

While powder cocaine had been a product for the rich and indulgent, now a similar or even more intense high was available to people of lesser means. The appeal of crack did not have inherent geographic limits. People in many places desire a cheap high.

The potential for crack to become a national problem was clearly foreseen before it happened. It was no secret that a cheap form of freebase cocaine could result in much higher addiction rates, as people who previously could not afford it were lured to try cocaine. In fact, in 1979, some six years before the first mention of “crack” in the national press (in a New York Times article on drug treatment),²⁰ Congress was put on notice of this risk. In July of that year, Robert C. Peterson, a researcher at the National Institute on Drug Abuse, testified at a hearing before a House Select Committee on Narcotics Abuse and Control. In his testimony, he said this of cocaine: “At present, we are confronted with a drug which has a moderately high potential for abuse, were it more readily available at much lower cost.”²¹

Simultaneous with this prediction being made, it was being fulfilled. At the same time Dr. Peterson was testifying, the Baking Soda Method was beginning to predominate in California and make its presence known in other cities. With the

¹⁹ Morgan & Zimmer, *supra* note 4, at 134.

²⁰ BRUCE A. JACOBS, DEALING CRACK: THE SOCIAL WORLD OF STREETCORNER SELLING 3 (1999).

²¹ FAIRMAN COOPER, *supra* note 11, at 14–15.

spread of crack, the drug world was about to change radically.

One possible catalyst to that change was occurring at about the same time that crack prevailed over other freebase variations. In the early 1980s, the primary shipment route of drugs (and particularly cocaine) into the United States was not via Mexico, but through the Caribbean and directly from South America. Between 1980 and 1983, there was a glut of powder cocaine in both places, and prices were dropping.²² This glut coincided with the development of crack, which may, in turn, have helped end that oversupply as the number of cocaine users increased across the United States. For cocaine wholesalers in the international trade, new markets created through a new product (crack) may have saved the day.²³

Exactly how crack spread across the nation from Los Angeles is not widely chronicled. What is beyond dispute is that it did find a beachhead in other major cities within a few years. By 1983, crack was available in Los Angeles, Miami, Houston, and New York City. Prior to that, it was largely limited to California, as occasional reports of the time revealed. For example, on June 30, 1980, *People* magazine published a report on the Pryor incident which also detailed the growth of cocaine freebase.²⁴ Titled "Richard Pryor's Tragic Accident Spotlights a Dangerous Drug Craze: Freebasing," the article includes a level of incisive reporting one might not expect from *People*, which included a good description of the geographic limits of freebase at the time:

One expert, UCLA research psychopharmacologist Ronald Siegel, suggests that as many as one million Americans have tried freebasing. How-to kits can be found in head shops from Miami to San Francisco for \$15 to \$20 apiece. The number of regular freebasers is of course much smaller—and narcotics police in Chicago, New York, Nashville and Houston say they are only vaguely aware of the trend. "Freebasing is more prevalent in the West," one Nashville cocaine dealer explains. "In California it is the accepted way of getting high."²⁵

Eventually, of course, crack cocaine did hit other cities, and hit them hard. One might imagine that this geographic movement was driven by a nationwide trafficker, the mob, or a gang, but the truth is not that simple. In fact, crack spread largely through the actions of unconnected groups and individuals, not through the actions of organized crime or street gangs.

In short, a crack dealer would peel away from the crowded markets of New York or Miami, find a smaller city, and begin selling crack in that less-saturated

²² *Id.* at 22.

²³ See Jesse Katz, Claire Spiegel & Ralph Frammolino, *Paper: No Crack Conspiracy -- Probe Finds Market Forces, Many Dealers - Not U.S. Plot*, SEATTLE TIMES, Oct. 20, 1996, <http://community.seattletimes.nwsources.com/archive/?date=19961020&slug=2355274>.

²⁴ *Dangerous Drug Craze*, *supra* note 15.

²⁵ *Id.*

market. For example, a crack dealer in the Bronx might visit Philadelphia, and find that crack cost twice as much there than it did in his hometown. He would see an opportunity and head up to Boston to increase his profits, or send an associate. The result was more competition in the city infiltrated, which would lower prices, which would in turn cause some dealers to spin out to smaller cities. From a huge city to a big city to a smaller one, it was through this process that crack would eventually hit the street in Buffalo or Albany or Lowell.²⁶

Some referred to this process as “disorganized crime,” with many entrepreneurs doing the same thing at the same time.²⁷ That appellation, though, is inaccurate. The spread of crack across the country through the action of individual dealers seeking more lucrative markets was very much “organized,” in the sense that it was structured and directed by simple market forces. Entrepreneurs were scattered by the lure of potential profit in what, to an economist, is a very predictable and organized pattern.

Economists would recognize this pattern readily, and note that one driving force in such a pattern is low barriers to entry. That is, it did not take huge amounts of capital or much expertise to sell crack: the baseline requirement was simply access to powder cocaine and a willingness to break the law. In the 1980s there were millions of people who met both criteria. With low barriers to entry, competition is furious and fast, with many competitors entering the market rapidly. It was this dynamic—lots of participants in an open market which required little more than a disrespect for the law—which in large part fueled both the rapid spread of crack and the violence that accompanied that drug’s sweep across the continent.

Typical of these entrepreneurs was Delroy Edwards, a Jamaican immigrant who sold drugs in Brooklyn housing projects. When he became aware of crack, he began to sell it along with other narcotics he was already dealing. He soon found he was mostly selling the new drug, and lots of it. Edwards looked to expand his business, but New York City was already chock-full of crack dealers. However, in other cities where there was less volume, customers were paying three to four times as much as Edwards was charging in New York City. Like any good businessman, Edwards went to where the profits were greater.²⁸

First, Edwards went to Washington, D.C., then expanded further to Philadelphia and Baltimore. At its peak, his organization, known as the “Rankers,” employed fifty people and made \$100,000 a day. At the same time, of course, others were expanding into the same territories, and then into smaller and further-off cities and towns.²⁹ By late 1989, the Rankers had disintegrated in the face of violence, poor leadership, and arrests, but by that time the new freebase drug, crack, had strong roots in new communities.

²⁶ Massing, *supra* note 17.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

According to a report in the *New York Times*, the Rankers were one of about forty groups with similar origins.³⁰ The influence of these Jamaicans, who often called their organizations "posses," was substantial according to that 1989 *Times* article:

Most, like the Rankers, took shape as gangs during the 1980 Jamaican election, then fled to the United States and regrouped. Here, their 10,000 to 20,000 members, organized in posses with as few as 25 members and as many as several hundred, keep incessantly on the move, slipping in and out of the many Jamaican communities scattered across the country.³¹

Intriguingly, this press report recognized the bare fact that these posses relied on good business practices:

"They're very good businessmen," says John A. O'Brien, an agent with the Bureau of Alcohol, Tobacco and Firearms (B.A.T.F.), the Federal agency that most closely monitors the posses. "They follow the law of supply and demand. When they see that a vial of crack selling for \$5 in New York will get \$15 in Kansas City, they'll move in." New York is their "training school," O'Brien says, "like going to Wharton. They'll take a guy doing a good job in Harlem and send him to open an office in the Midwest." On his arrival in the new area, the posse sales rep will rent a motel room and conduct a market survey of sorts to determine the most lucrative spot in town. Then he'll rent an apartment or, better yet, get a single female to lend him one in return for crack.³²

One dynamic that is reflected in the story of Delroy Edwards was a very low "opportunity cost" to him when he chose to sell crack. To an economist, opportunity cost is the price of not doing something else—that is, what opportunities are given up to pursue a line of business. If, for example, a surgeon wants to start a talk show, there is an opportunity cost in doing so because she will not be able to use that time and energy conducting surgery. If the talk show pays less than performing surgery, the surgeon will lose income and should consider that opportunity cost in making her decision.

For many of those who became crack dealers, both selling crack in the first place and moving into lesser cities involved little opportunity cost. Like Edwards, it is likely that many of these first entrepreneurs were already selling drugs, so there was no opportunity cost to them in simply selling a more profitable and popular narcotic. Similarly, in spinning off to new cities, it did not necessarily

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

mean a lost opportunity—it was simply a more profitable way of doing what they already did. It was not a surgeon doing a talk show; it was more like a surgeon doing more lucrative elective surgery. For Delroy Edwards, selling crack and expanding to new territories were rational choices, and thousands of those rational choices combined to create the viral urban plague of the 1980s, whose legacy still haunts our cities, our law, and our very sense of what might yet upend us.

IV. THE TAKE-AWAY: CRACK, BUSINESS, AND AIDS

To be from Detroit (as I am) is like having a lover who breaks your heart again and again. Each heartbreak has its own song, though, and the saddest of these may be the one that goes with that city's devastation wrought by crack cocaine.

For the first five years of my life, I grew up on Harvard Road near the corner of Warren on the east side of the city. Just blocks from that house now lay entire city blocks devoid of human life—just large rectangles of weeds and trees, the houses and the people and the very sense of a human community having been removed. On those blocks, the homes were all abandoned, so they were torn down and hauled away in slabs to a landfill. It is an eerie thing to drive through a major city and to find these “ghost blocks” one after another, block after block, as you drive towards the rebuilt auto plants on Conner Avenue.

For a very different five years much later in life, I was a federal prosecutor in Detroit, and during that time I prosecuted crack cases. However, over time I became disillusioned with that project.³³ What changed was not my perception of how destructive crack can be to individuals and the social fabric. I only needed to drive through the ghost blocks near my old neighborhood to see that. Rather, what changed was any sense that what we were doing *worked*. All evidence was to the contrary. In fact, it seemed that our efforts to lock up as many young black men as possible were having further detrimental effects on the community we were trying to serve.

Eventually, the reason we were not accomplishing anything became clear. Narcotic distribution is a business—a giant, lucrative, international business. Those entities that are successful in this business share certain qualities with any other business—they manage money well, hire with care, identify growth markets, and deal well with both vendors and sales networks. Also, like any good business, they make sure that the lowest-paid workers in the network are easily replaceable, since there will be high turnover in those jobs which do not require any particular skill. Unfortunately, our drug laws target these easily-replaced workers: the mules, the street sellers, and the guys who cook the powder cocaine into crack.

³³ I have written elsewhere about this change in perspective, which was largely attributable to the arguments of Assistant Federal Defender Andrew Densemo. See generally Mark Osler, *The Power of Futile Speeches*, HUFFINGTON POST, June 17, 2011, http://www.huffingtonpost.com/mark-osler/the-power-of-futile-speech_b_878186.html.

That is because it is those workers who most often handle the drugs themselves, and our narcotics laws use the weight of the drugs possessed as a proxy for culpability—a proxy which utterly fails to take into account the business model at the heart of the problem. Those who are most culpable and richly rewarded by the drug trade, on the other hand, may never handle any drugs at all, and are usually protected from scrutiny by layers of secrecy and silence.

To begin looking at this operation as a business, let us consider another type of business which many of us see in operation with some regularity: a bagel shop. The bagels are made by low-paid workers who perform repetitious tasks; the dough is shipped to the store in bulk, and the job of the bagel bakers is simply to form the dough into bagels and bake them shortly before the customer buys them. Some bagel shops have a window where you can watch this happen, and also see the large-print instructions on the wall. The entire operation is set up with the understanding that these workers will leave frequently and need to be replaced. For example, the large-print sign and simple instructions tell us that new workers in that area will need little or no training, and very little skill.

If we wanted to shut down that bagel shop by arresting some of the people associated with it, the best way would be to take out the people who have unique skills—the person who arranges shipment of the dough, for example, or who handles the cash flow. The worst way, of course, would be to arrest all the bagel bakers, because they would be so easily replaced. Yet, it is the bagel bakers who have the most bagels in their hands at any one time.

Our current model of addressing narcotics is to pour resources into sweeping up the bagel bakers, because they are the ones holding the most “weight” of the illegal substance, and the easiest to catch. It is no wonder, then, all these years later, that the “war on drugs” has been unsuccessful.

The impact of this unfortunate choice was particularly acute in crack cocaine trafficking, where for decades those who sold or possessed crack were much more harshly punished than those who sold powder cocaine. Within the federal sentencing guidelines and the mandatory minimum terms made a part of the narcotics statutes, one gram of crack cocaine was punished the same as 100 grams of powder cocaine.³⁴ This incredible disparity heightened the effect revealed in the bagel shop analogy above, because crack is usually “cooked up” by street-level dealers; at every point before that, at higher levels of culpability, the drug is in its powder form. It is only shortly before the product is sold to consumers that crack (like a bagel) takes its final form. The 100:1 ratio gave federal agents express incentives to target the least culpable defendants—the ones who are most easily replaced—because crack was found only in their hands.

Though crack cocaine is still in widespread use across the United States, it is no longer growing as a drug of choice. This could be because other drugs have

³⁴ U.S. SENTENCING GUIDELINES MANUAL § 2D1.1(c) (2005); 21 U.S.C. § 841 (2006). This ratio was finally removed from federal law in favor of an 18-to-1 ratio by the Fair Sentencing Act of 2010. Pub. L. No. 111-220, 124 Stat. 2372.

come along, or because its users died out, or it could be that the trafficking in crack finally moved behind closed doors. Interestingly, the decline coincided not with a heightening of law enforcement action, but a slackening. In fact, the high levels of use sustained almost twenty years of draconian measures intended to control that use. Now that the epidemic has to some degree burned itself out (as all epidemics do), now is the right time to trace the arc of this particular tragedy and draw lessons from it.

Those lessons are often surprisingly simple. Perhaps most obviously, legislation and tactics for fighting narcotics trafficking need to be the product of systemic, goal-oriented analysis that takes economics into account. Perhaps the most important person on a team developing legislative strategies to combat narcotics should be a business expert—someone who knows what makes a business fail, since the goal of narcotics-fighting is to make a business fail.³⁵ The history of crack in America reveals nothing so clearly as the wrong way to fight narcotics, and it is an important and expensive lesson to have learned—if we do learn.³⁶

In hindsight, it is easy to see: the creation of crack, and its spread, were the product of simple economic forces—the same ones that impel the creation and spread of other popular consumer products. Yet, somehow, we never took the most essential first step in addressing the scourge of crack: evaluating the problem as a product of simple market forces.

In the modern language of business, we might describe the spread of crack as “viral”: it infected one area, replicated (as more people entered the business of selling crack), and then spread to a new part of the body. It is the dream of every entrepreneur to go viral—the ultimate business success.

The analogy to the spread of a virus is particularly striking when we look at the other dark shadow growing across the public health landscape in and around 1980: AIDS. Though they were unconnected, the symmetry between the spread of crack and AIDS at the same time is plain and stark.

As crack was coalescing as the dominant freebase form in California in 1980 and 1981, the first odd cases of Kaposi’s Sarcoma began to occur in New York

³⁵ My own view is that the best tactic to create business failure in drug networks would be through targeted forfeitures designed to restrict cash flow and credit, which are the real lifeblood of any business. See generally Mark Osler, *What Would It Look Like If We Cared About Narcotics Trafficking? An Argument to Attack Narcotics Capital Rather Than Labor*, 15 UDC/DCSL L. REV. 113 (2011).

³⁶ While I write here in support of policy changes, it is not written in support of a policy of narcotic legalization, though I do think that legalization is a principled and sometimes appealing argument. What stops me from weighing in favor of that option is simply those ghost blocks, and the knowledge that the tragedy in those ghost houses, now gone, was created not only by the selling of drugs, but the using of drugs like crack cocaine. I know from the cases I worked on and from those who work in the city that there were children hungry while their mother searched for crack money by selling oral sex for \$5; that there were children who were given the drug; and that at the same time that jobs were leaving the city of Detroit, so were the skills of potential workers who were too addicted to do much of anything. None of this would have been changed had crack been legal.

among young gay men. Though AIDS cases had probably cropped up in the United States before this time (just as freebase was used, unnoticed, in Los Angeles during the same period), these unusual diagnoses spurred some of the first public signs of awareness that a dark new disease was present, as the Center for Disease Control formed a task force to examine the phenomenon in June 1981.³⁷ Just as crack did not have its name yet, at this point neither did AIDS.³⁸ And just like crack, AIDS slowly infected communities, often moving from the largest cities (like New York) to smaller ones.

The similarities extend even to origin myths. In the same way that Congresswoman Waters alleged that crack was a creature of a CIA plot, both a President of South Africa (Thabo Mbeki) and a Nobel Peace Prize Laureate (Kenyan ecologist Wangari Maathai) claimed that the CIA created and propagated the AIDS virus. The CIA/AIDS link even made *Time* magazine's "Top Ten" list of conspiracy theories.³⁹

The odd symmetry between crack and AIDS went unnoticed at the time each was emerging in the United States, because neither was understood or even consistently named. As we can (from a historical perspective) now see clearly, the spread of AIDS followed the principles of biology, while crack followed the laws of economics.

Importantly, AIDS was dealt with as a public health crisis (albeit, often with strikingly little sympathy for the victims), while crack was dealt with as a law enforcement crisis—that is, we did attack AIDS using biology, but we did not attack crack with economics. With AIDS, federal efforts involved using those same principles of biology to identify and neutralize the root cause of the illness and the means by which it was transmitted. In addressing crack, though, the federal focus was on identifying and incarcerating the users and sellers, with little apparent effort given to discerning root causes of the epidemic or the economic transmission of the problem from city to city.

The outcomes of these two federal efforts were very different. CDC and other government-funded scientists (in cooperation with other sources) eventually, but relatively successfully, addressed the AIDS crisis, saving hundreds of thousands of lives. A biological event was confronted using the science of biology. The symmetry between AIDS and crack ends there. In our rush to incarcerate we never applied the governing laws of economics to crack, and never effectively dealt with that epidemic. The cost of that error in terms of lives and human misery is nearly incalculable.

³⁷ *History of AIDS Up to 1986*, AVERT, <http://www.avert.org/aids-history-86.htm> (last visited Dec. 30, 2012).

³⁸ *Id.*

³⁹ *Conspiracy Theories*, TIME, July 20, 2009, <http://www.time.com/time/specials/packages/completelist/0,29569,1860871,00.html>.